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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,813	09/21/2000	Kevin R. Crompton	M0459/7018 DW	9117

7590 10/07/2002
David Wolf
Wolf Greenfield & Sacks PC
600 Atlantic Ave
Boston, MA 92210

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/07/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,813

Applicant(s)

CROMPTON, KEVIN R.

Examiner

Cheryl Juska

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 28-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 46-57 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,7,8. 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27 and 47-57, drawn to a flocked fabric, classified in class 428, subclass 90.
 - II. Claims 28-46, drawn to a method of making a flocked fabric, classified in class 26 subclass 2 and/or class 8, subclass 467+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the fabric can be made by printing the pattern on the fabric or flock substrate before embossing said flock.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

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5. During a telephone conversation with Michael Pomianek in June 2002, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-27 and 47-57. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-46 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6, 19, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding said claims, the phrase "bark-like" renders the claims indefinite because the claims includes elements not actually disclosed (those encompassed by "-like"), thereby rendering the scope of the claims unascertainable.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1, 2, 7, 8, 11-15, 20,21, 24, 25, 49, 53, and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,247,215 issued to Van Alboom et al.

Applicant claims a fabric comprising a substrate, an adhesive layer, and a pile layer adhered to said substrate via the adhesive. The pile has an embossed pattern thereon and superimposed printed pattern. The effects of "visually discernable regions," "elongate shapes," "three-dimensional texture," "embossed depressions," and "color and shading," which are recited in claims 1, 2, 7, 12-15, 20, 25, 49, and 53 are produced by air embossing a flocked fabric and subsequently transfer printing said embossed fabric. In other words, the presently claimed effects are inherent to the process of air embossing and printing a flocked fabric.

Van Alboom discloses a printed flocked pile fabric which has a textured pile (Title and Figure). Van Alboom, in the *Background of Invention* section, teaches it is known to texture a flocked fabric by air embossing and, thereafter, printing said air-embossed flocked fabric (col. 1, lines 65-66). Thus, claims 1, 2, 7, 8, 11-15, 20,21, 24, 25, 49, 53, and 55 are anticipated by the Van Alboom teaching.

Claim Rejections - 35 USC § 103

11. Claims 3-6, 16-19, 26, 27, 47, 48, 50, 51, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Van Alboom patent in view of US 5m756,180 issued to Squires et al.

Said claims limit the fabric to a camouflage fabric having a scene or illustration of a sylvan setting, such as trees, flowers, rocks, or bark. Although Van Alboom does not explicitly teach a camouflage fabric, camouflaged flock fabrics are well-known in the art. For example, Squires discloses a flocked fabric suitable as outerwear, which can be of a camouflage pattern (abstract and col. 1, lines 13-18). Thus, it would have been obvious to one skilled in the art to choose a camouflage pattern for the patterns of air embossing and transfer printing disclosed by Van Alboom. Motivation to do so would be to provide an aesthetically pleasing and marketable product.

12. Claims 9, 10, 22, 23, 52, 54, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Van Alboom patent.

Although the Van Alboom does not explicitly teach the limitations of random alignment of patterns and non-uniform length and width of regions of embossed pattern, it is argued that said claims are obvious over the cited art. Specifically, it is asserted that these features are design dependent. As such, these features are deemed to be within the level of ordinary skill to a general worker in the art and thus, obvious to one of ordinary skill in the art. The motivation to choose these desired design features is merely a matter of aesthetic choice.

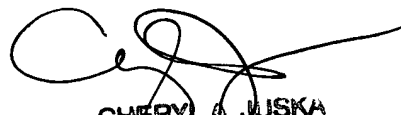
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Conclusion

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

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September 30, 2002